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July 28, 2006

FILED ELECTRONICALLY AND FIRST-CLASS MAIL SERVICE

The Honorable Charles L.A Terreni
Chief Clerk
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: Petition of Office of Regulatory Staff for a Rulemaking Proceeding to
 Examine the Requirements and Standards to be Used by the
 Commission When Evaluating Applications for Eligible
 Telecommunications Carrier Status and When Making Annual
 Certification of ETC Compliance to the Federal Communications
 Commission
 Docket No. 2006-37-C, ELS File No. 611-10116

Dear Mr. Terreni:

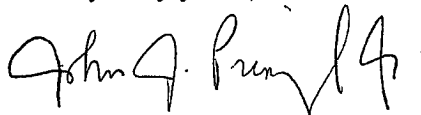
Enclosed is the original and one copy of the **Comments of AT&T** filed by
AT&T Communications of the Southern States, LLC in the above-referenced matter.

Please acknowledge your receipt of this document by file-stamping the
copy of this letter enclosed, and returning it in the enclosed envelope. By copy of this
letter, I am serving all the entities shown on the attached Certificate of Service.

If you have any questions or need additional information, please do not
hesitate to contact me.

With kind regards, I am

Very truly yours,



John J. Pringle, Jr.

JJP/cr
Enclosures

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ELECTRONIC FILING INSTRUCTIONS**

BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
DOCKET NO. 2006-37-C

IN RE:

Petition of Office of Regulatory Staff for a)
Rulemaking Proceeding to Examine the)
Requirements and Standards to be Used by the)
Commission When Evaluating Applications for)
Eligible Telecommunications Carrier Status and)
When Making Annual Certification of ETC)
Compliance to the Federal Communications)
Commission)
_____)

COMMENTS OF AT&T

AT&T Communications of the Southern States, LLC ("AT&T"), pursuant to the Commission's Notice requesting comments from interested parties, hereby submits its Comments encouraging the Commission to adopt rules governing applications for designation of Eligible Telecommunications Carrier ("ETC") status that are consistent with the findings and guidelines adopted by the Federal Communications Commission ("FCC") in its Report and Order in CC Docket No. 96-45 released on May 17, 2005.¹

BACKGROUND

The *FCC ETC Order* established a public interest test the FCC uses in making determinations regarding ETC status and the requirements that a carrier must meet in order to qualify for ETC status under Title 47 USC §214(e). The FCC makes determinations regarding

¹ "In the Matter of Federal-State Joint Board on Universal Service" ("*FCC ETC Order*").

ETC status when a state does not have authority to review ETC applications. In the *FCC ETC Order*, the FCC strongly recommends that state adopt the same public interest test and requirements when reviewing ETC applications over which the state has authority.

The framework adopted in the *FCC ETC Order* is the result of the efforts of not just the FCC but also of the Federal-State Joint Board on Universal Service (“Joint Board”). The Joint Board and FCC have fashioned a “more rigorous”² framework for scrutinizing applications by providers for status as an ETC and, on an ongoing basis, for evaluating the performance of carriers already granted ETC status. The *FCC ETC Order* fosters three important policy objectives. These are: first, to “improve the long-term sustainability of the universal service fund;”³ second, to “allow for a more predictable ETC designation process;”⁴ and third, to “ensure designation of carriers that are financially viable, likely to remain in the market, willing and able to provide the supported services throughout the designated service area, and able to provide consumers an evolving level of universal service.”⁵ This Commission's decisions regarding ETC status will “have *national implications* that affect the dynamics of competition, the national strategies of new entrants, and the *overall size* of the federal universal service fund.”⁶ Adoption of the *FCC ETC Order* guidelines in South Carolina is clearly in the public interest.

I. Statutory Authority

The federal statutory law germane to state commission involvement in universal service issues is found principally in two sections of the Communications Act of 1934, as amended by

² *FCC ETC Order* ¶ 2.

³ *Id.*

⁴ *Id.* ¶ 1.

⁵ *Id.* ¶ 60.

⁶ *FCC ETC Order*, para. 60 (emphasis added).

the Telecommunications Act of 1996. Those two provisions are section 254 (47 USC § 254) and section 214(e) (47 USC § 214(e)). Section 254 provides for a partnership between the FCC and the Joint Board in developing and implementing major changes to the informal universal service policy formerly employed at the federal level.⁷ Section 254 substituted a statutory definition for what had been a non-codified general policy regarding universal service,⁸ and it authorized ongoing alterations and modifications to the universal service program.⁹ The 1996 Act converted universal service from an inchoate policy into an explicit, defined, and soundly based program.¹⁰

Section 254(e) also provides that only an ETC "designated under section 214(e) shall be eligible to receive specific Federal universal service support."¹¹ Section 254(f) provides that state commissions "may adopt regulations not inconsistent with the [FCC]'s rules to preserve and advance universal service."¹²

A state commission's role in determining ETC eligibility, then, rests in Section 214(e).¹³ Additionally, Section 214(e) provides that a state commission is responsible, in concert with the Joint Board, for defining or redefining the service areas that an ETC applicant will serve.¹⁴ The specific text of these relevant provisions is as follows:

(2) Designation of eligible telecommunications carriers

⁷ See 47 USC § 254(a)-(b).

⁸ See, e.g., *TOPUC v FCC*, 183 F3d 393 (5th Cir. 1999).

⁹ 47 USC 254(c)(2).

¹⁰ See *TOPUC v FCC*, *supra*. Universal service policies had been based on the language found in 47 USC § 1 ("so as to make available, so far as possible, to all the people of the United States . . . a . . . Nation-wide . . . communication service").

¹¹ 47 USC § 254(e).

¹² 47 USC § 254(f).

¹³ 47 USC 214(e)(2).

¹⁴ 47 USC 214(e)(5).

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

(5) “Service area” defined

The term “service area” means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, “service area” means such company’s “study area” unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410 (c) of this title, establish a different definition of service area for such company.

From these two provisions, it is clear that the role of this Commission is to:

1. designate a common carrier, if consistent with public interest requirements, and if it meets the requirements of Section 214(e)(1), as an eligible telecommunications carrier; and
2. make the designation for a service area.

The FCC has made clear that “Section 214(e)(2) ... provides state commissions with the primary responsibility for performing ETC designations.”¹⁵

¹⁵ *FCC ETC Order* ¶ 8.

II. FCC ETC Order

In its Report and Order, the FCC adopted many of the Joint Board's recommendations for revision and improvement in the ETC process. The requirements and public interest factors in the *FCC ETC Order* apply to ETC applications filed with the FCC.¹⁶ In addition, "as recommended by the Joint Board, [the FCC] encourage[d] states that exercise jurisdiction over ETC designations pursuant to section 214(e)(2) . . . to adopt these requirements when deciding whether a common carrier should be designated as an ETC."¹⁷ The *FCC ETC Order* provides that a carrier requesting ETC status must:

- (1) commit to provide service throughout its proposed designated service area to all customers as demonstrated by submitting a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area;
- (2) demonstrate its ability to remain functional in emergency situations;
- (3) demonstrate that it will satisfy appropriate consumer protection and service quality standards;
- (4) demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation; and
- (5) certify that the carrier acknowledges that the FCC may require it to provide equal access to long distance carriers if all other ETCs withdraw from the market.¹⁸

¹⁶ The FCC reviews ETC applications when the state relinquishes its authority to review ETC applications to the FCC or when the application is on tribal lands. See 47 USC § 214(e)(6).

¹⁷ *FCC ETC Order* ¶ 1.

¹⁸ See, e.g., ¶ 2.

Additionally, the Report and Order requires that, once approved by the FCC, an ETC must provide annually a progress report on its five-year service quality improvement plan, detailed information on any outage, the number of requests for service from potential customers within the carrier's service areas that were unfulfilled during the past year, the number of complaints per 1,000 handsets or lines, certification that it is complying with applicable service quality standards and consumer protection rules, certification that the carrier is able to function in emergency situations, certification that the carrier is offering a local usage plan comparable to that offered by the ILEC, and certification that the carrier acknowledges that the FCC may require it to provide equal access.¹⁹ The FCC urged states to require ETCs under state jurisdiction to provide these additional reports to the states: "We encourage states to require these reports to be filed by all ETCs over which they possess jurisdiction."²⁰

The analytical framework of the *FCC ETC Order* also provides for certain consumer protections and a review, on a case-by-case basis, of the factors necessary to ensure that each ETC provides a local usage component in its universal service offerings that is comparable to the plan offered by the incumbent local exchange carrier in the area. The requirements obligate the ETC to be able to remain operational in case of an emergency so that consumers will have service when they need it most. The new approach creates an annual review of the actions of an ETC so that the qualification process is ongoing, and it provides clear planning and reporting requirements to prove that the use of federal universal service funding support complies with Section 254 of the federal Act.

¹⁹

Id.

²⁰

Id. ¶ 4

The FCC also revised the public interest analysis it will use in making ETC designations. The *FCC ETC Order* “set[s] forth our public interest analysis for ETC designations, which includes an examination of (1) the benefits of increased consumer choice, (2) the impact of the designation on the universal service fund (“USF”), and (3) the unique advantages and disadvantages of the competitor’s service offering.”²¹ The FCC’s public interest examination also includes an analysis of the potential for creamskimming when an ETC seeks designation below the study area level of a regional LEC.²² The discussion of creamskimming is found in the context of considering a rural carrier’s application, but the analysis holds true for non-rural carrier applications as well. The FCC stated:

By serving a disproportionate share of the high-density portion of a service area, an ETC may receive more support than is reflective of the rural incumbent LEC’s costs of serving that wire center because support for each line is based on the rural telephone company’s average costs for serving the entire service area unless the incumbent LEC has disaggregated its support.²³

In other words, the FCC found that creamskimming occurs when a carrier serves only low cost customers while recovering the USF support on the basis of providing service to all customers. This stratagem is achieved by serving the wire center(s) with high population density and not serving the wire center(s) with low population density, when the USF support is average across all wire centers. The improved analysis now will look at the population density of the wire centers in a carrier’s service area to determine if an ETC application could result, even unintentionally, in creamskimming.

²¹ *Id.* ¶ 18.

²² *Id.*

²³ *Id.* ¶ 49 (cite omitted).

The same analysis is appropriate for non-rural carriers, particularly if an applicant seeks ETC status in order to provide service supported by the USF to a partial wire center that is receiving USF high cost support. The USF support for the wire center is based on the average cost per loop across the entire wire center, yet the ETC might request to serve only, or primarily, the lower cost, high density portion of the wire center. The ETC would receive support based on the average loop cost while serving only the low cost customers, and it would receive a financial windfall while draining away the implicit support intended to protect and enable service to the high cost, low density portion of the wire center. The FCC “strongly encouraged state commissions to consider the same factors in their public interest reviews.”²⁴ These, then, are considerations for this Commission, as well.

III. Recommendations

It is particularly appropriate that the South Carolina Commission conform its administration of the ETC process to the regime created by the *FCC ETC Order*. This approach has its basis in the recommendations of the Joint Board, whose membership includes state and federal regulators. The FCC’s requirements and public interest factors will apply to ETC applications filed with the FCC; there is no policy rationale for why they should not also apply to intrastate scenarios in South Carolina. Thus, AT&T strongly supports that the *FCC ETC Order’s* requirements and policies be applied to all ETC applications filed with this Commission.

South Carolina’s adherence to these principles will contribute to a rational, comprehensive, coordinated national policy that promotes the advancement and preservation of universal service. The FCC found that, collectively, state decisions regarding ETC status “have national implications that affect the dynamics of competition, the national strategies of new

²⁴ *Id.* ¶ 41.

entrants, and the overall size of the federal universal service fund.”²⁵ The requirements embodied in the FCC ETC Order (1) will result in a rigorous ETC designation process,²⁶ (2) will “improve the long-term sustainability of the universal service fund,”²⁷ (3) will “allow for a more predictable ETC designation process,”²⁸ and (4) will “ensure designation of carriers that are financially viable, likely to remain in the market, willing and able to provide the supported services throughout the designated service area, and able to provide consumers an evolving level of universal service.”²⁹ The Joint Board obviously felt, and the FCC concurred, that these are considerations deserving of national, uniform application. Consequently they are certainly deserving of application in South Carolina.

A major reason for adopting the FCC guidelines is set forth in a cogent summary statement found in the *FCC ETC Order*:

We agree with the Joint Board's recommendation that a rigorous ETC designation process ensures that only fully qualified applicants receive designation as ETCs and that all ETC designees are prepared to serve all customers within the designated service area.³⁰

In other words, it is the interest of consumers that is at the heart of the new, revised application process. The consumer protections embodied in the new regime certainly justify implementation in South Carolina. As but one example, the ETC is to prove itself able to remain operational in case of an emergency so that consumers will have service when they need it most. This critical

²⁵ *Id.* ¶ 60.

²⁶ *Id.* ¶ 2.

²⁷ *Id.*

²⁸ *Id.* ¶ 1.

²⁹ *Id.* ¶ 60.

³⁰ *Id.* ¶ 58.

showing – made even more important in a post-9/11 world – is certainly as apropos in South Carolina as in the rest of the nation.

The *FCC ETC Order* also acknowledges that a public interest showing is required in all ETC proceedings, both rural and non-rural. A carrier that seeks USF high cost support should be required to meet all of the criteria to prove the public interest is advanced, regardless of whether the filing is made at the federal or state level. This Commission should employ the public interest analysis embodied in the *FCC ETC Order*.

Conclusion

The *FCC ETC Order* summarizes the states' role as follows:

Section 214(e)(2) of the Act gives states the primary responsibility to designate ETCs and prescribes that all state designation decisions must be consistent with the public interest, convenience, and necessity.³¹

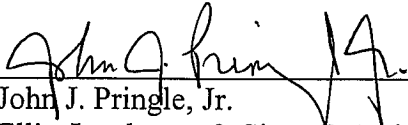
In order that this "primary responsibility" might be exercised appropriately, AT&T recommends that the Commission adopt rules consistent with the *FCC ETC Order*. Such a course would best enable the Commission to comply with the Joint Board's recommendation and the FCC's decision to achieve "a rigorous ETC designation process" and a "predictable application process."³² It will also improve the long-term sustainability of the USF fund³³, thus safeguarding customer interests in the long run. For the reasons stated, AT&T respectfully urges the Commission to adopt the recommendations contained in these comments.

³¹ *Id.* ¶ 61 (emphasis added).

³² *FCC ETC Order* ¶ 58.

³³ *Id.*

Respectfully submitted this 28th day of July, 2006


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BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2006-37-C

IN RE:

Petition of Office of Regulatory Staff for a)	
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Requirements and Standards to be Used by the)	
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When Making Annual Certification of ETC)	
Compliance to the Federal Communications)	
Commission)	
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This is to certify that I have caused to be served this day, one (1) copy of the **Comments of AT&T** via electronic mail service and by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

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July 28, 2006
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